

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AYANNA Z. GREEN,
Petitioner,
vs.
TINA HORNBECK, Warden,
Respondent.)
No. C 08-3422 JSW (PR)
ORDER DENYING
CERTIFICATE OF
APPEALABILITY
(Docket no. 14)

Petitioner, a prisoner of the State of California, filed a *pro se* 28 U.S.C. § 2254 petition for a writ of habeas corpus. In an order dated July 24, 2008, this Court dismissed the petition as a second or successive petition (docket no. 8). Petitioner has filed a notice of appeal and a motion requesting a certificate of appealability.

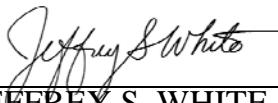
A judge shall grant a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Determining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding." *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* at 484; see *James v. Giles*, 221 F.3d 1074, 1077 (9th Cir. 2000). As each of these components is a

1 “threshold inquiry,” the federal court “may find that it can dispose of the application in a
2 fair and prompt manner if it proceeds first to resolve the issue whose answer is more
3 apparent from the record and arguments.” *Slack*, 529 U.S. at 485. Supreme Court
4 jurisprudence “allows and encourages” federal courts to first resolve the procedural
5 issue. *See id.*

6 Petitioner has not established that “jurists of reason would find it debatable
7 whether the district court was correct in its procedural ruling.” *Id.* at 484. Accordingly,
8 the request for a certificate of appealability is DENIED (docket no. 14). The Clerk of
9 Court shall forward this order, along with the case file, to the United States Court of
10 Appeals for the Ninth Circuit. *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir.
11 1997). Petitioner may also seek a certificate of appealability from that court. *See Asrar*,
12 116 F.3d at 1270.

13 IT IS SO ORDERED.

14 DATED: October 20, 2008

15 
16 JEFFREY S. WHITE
17 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

AYANNA Z. GREEN,

Case Number: CV08-03422 JSW

Plaintiff,

CERTIFICATE OF SERVICE

V.

TINA HORNBECK et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 20, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Ayanna Z. Green
W75617
P.O. Box 96
Chowchilla, CA 93610-0096

Dated: October 20, 2008

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

Jennifer Ottolini
Richard W. Wieking, Clerk
Jennifer Ottolini, Deputy